

## **COLORADO, UTAH--Tenth Circuit backs decision over Qwest QPP agreement**

The U.S. Court of Appeals for the Tenth Circuit (Denver) recently affirmed the rulings of two federal district courts, as well as the Colorado Public Utilities Commission and the Utah Public Service Commission, and determined Qwest Corp.'s "master services agreement" entered into with a competitive carrier is subject to state commission review and approval.

The Tenth Circuit's consolidated decision comes on appeal from federal district courts in Colorado and Utah, which affirmed decisions from both state commissions that Qwest and MCImetro Access Transmission Services, LLC, are required to file the agreement through which the incumbent carrier provides its Qwest Platform Plus (QPP) services to MCImetro for a negotiated price.

In challenging the decisions of the state regulatory agencies and the district courts, Qwest argued that the filing obligation under section 252 of the 1996 federal Telecommunications Act only applies if an agreement contains network elements that Qwest must make available to other carriers in accordance with the Act. In other words, Qwest said that "the filing obligations of section 252 arise only if a section 251 service or element is part of the agreement."

Qwest claimed that the services provided under the QPP consist of two network elements -- switching and shared transport -- which are no longer subject to the unbundling requirements under section 251 as a result of the "triennial review" order and "triennial review" remand order. Consequently, the QPP agreement is not an "interconnection agreement" within the meaning of section 252, according to Qwest.

Both the Colorado and Utah commissions found that section 252 requires the filing of all interconnection agreements and that switching and shared transport "clearly fall into the category of interconnection." Regulators further contended that the QPP agreement was negotiated as the result of Qwest having received a request for interconnection, services, or network elements pursuant to section 251. Both federal district courts affirmed the commissions' findings, and Qwest subsequently appealed both district court rulings.

In its recently handed down opinion, the Tenth Circuit agreed with the findings of the district courts and explained that the "QPP agreement contains an ongoing obligation relating to a facility or equipment used in the provision of telecommunications service," and is therefore subject to filing under section 252.

"We believe that all agreements which set forth ongoing obligations which relate to interconnection and unbundled network elements must be filed with the commission pursuant to section 252 (e)(1)," the court wrote in its decision.

The Tenth Circuit further pointed out that although the FCC determined that incumbents were not required to provide switching and shared transport as unbundled network elements, that conclusion says nothing about whether switching and shared transport are related to the obligation to interconnect found in section 251 (c)(3). (Cases 06-1132, 06-4021) - Carrie DeLeon, [carrie.deleon@wolterskluwer.com](mailto:carrie.deleon@wolterskluwer.com)